

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte FRANKLIN C. BRADSHAW ET AL.

Reissue Application No. 09/664,794



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on May 20, 2004. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matter requiring attention prior to docketing is identified below.

In the Final Rejection entered on September 19, 2002 (Paper No. 17), the examiner withdrew his rejection of claims 36 through 48 as being based on a defective reissue declaration under 35 U.S.C. 251 and instead rejected claims 36 through 46 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the reissue was based. An Appeal Brief was filed on February 14, 2003 (Paper No. 20). Under the Status of the Claims on page one, applicants' state that claims 36 through 48 are under Final Rejection. Thereafter, the

examiner in the Examiner's Answer entered on June 4, 2003 (Paper No. 22) under the Status of Claims on page two indicates that the applicants' statement of the status of the claims contained in the Appeal Brief is correct, while under the Grounds of Rejection on page three he indicates that only claims 36 through 46 are rejected. In an Examiner's Answer filed on November 7, 2003 (Paper No. 25) after the prior Examiner's Answer was vacated, the examiner repeats under the Status of Claims on page 2 that the status in the Appeal Brief is correct while under the Grounds of Rejection on page 3 he repeats that only claims 36 through 46 are rejected. The status of claims 47 and 48 needs to be clarified.

Accordingly, it is

ORDERED that the application is returned to the examiner for clarification of the status of claims 47 and 48, and for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

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